

***California Department of Health Services Emergency Regulations***  
***Effective May 1, 1997***

**TITLE 17 CALIFORNIA CODE OF REGULATIONS DIVISION 1**  
**CHAPTER 11. OCCUPATIONAL LEAD POISONING PREVENTION PROGRAM**

**Article 1. Definitions**

**Section 38001. Occupational Lead Poisoning Prevention Program: Definitions.**

(a) "Altered or disturbed" means subjected to a process that may result in the release of dust, mist, fume, or other particles; such processes may include, but are not limited to, cutting, welding, grinding, polishing, machining, scraping, melting, sanding, spraying or pressure blasting.

(b) "De minimus amount" means any of the following:

- (1) Lead present in materials which are altered or disturbed and have a lead concentration less than 0.5% (5000 ppm) by weight;
- (2) Lead present in materials where the total weight of such materials altered or disturbed during the calendar year is known to be 16 ounces (one pound) or less by weight;
- (3) Lead present in materials where no such material is altered or disturbed at any individual employee's place of employment on more than one day during the calendar year, i.e., if no employee works on more than one day during the calendar year in any location where lead-containing materials are being altered or disturbed, then the amount is de minimus.

(c) "Employee" means any individual employed for at least 160 hours in the prior calendar year, regardless of whether the individual's specific job involved potential exposure to lead or lead-containing materials.

(d) "Lead evaluation" means a review of the place of employment and the materials and processes involved in the operation of an employer's business, including but not limited to review of Material Safety Data Sheets or other manufacturer-supplied data, product labeling, or analytical testing results for presence of lead in materials of unknown composition.

(e) "Lead was not present at the place of employment" means that no amount of lead or lead-containing material was present at the place of employment or in the materials and processes used in the operation of the employer's business, with the following exceptions:

- (1) Lead that was not altered or disturbed during the operation of the employer's business and was present in a form, or contained in such a manner, that it could not be inhaled or ingested (examples are undisturbed building materials, unused materials and supplies, intact lead storage batteries); or
- (2) Lead present as a result of general environmental contamination which was not the result of the operation of the employer's business.

(f) "Metal work" means the machining or casting of metals or metal alloys.

(g) "Occupational Lead Poisoning Fee" means a fee pursuant to Section 105190 of the Health and Safety Code which is assessed annually by the State Board of Equalization on employers with 10 or more employees in industries identified by the Department of Health Services as having documented evidence of potential occupational lead poisoning. These industries are listed by four-digit Standard Industrial Classification (SIC) Code in Section 38005.

(h) "Place of employment" means any location, not limited to a fixed site, where employees carry out work duties which are a part of a business operation.

(i) "Prior calendar year" means the time period from January 1 to December 31 of the year preceding that year in which the Occupational Lead Poisoning Fee is due.

(j) "Standard Industrial Classification (SIC) Code" means a system of four-digit numerical codes to designate the activities of a business operation, set forth by the U.S. Office of Management and Budget in the *Standard Industrial Classification Manual, 1987*.

## **Article 2. Waivers of the Occupational Lead Poisoning Fee**

### **Section 38002. Fee Waiver Eligibility.**

(a) An employer in an industry listed in Section 38005 is eligible for a waiver of the Occupational Lead Poisoning Fee if the employer can demonstrate, by completing the procedures specified in Section 38003, that:

- (1) Lead was not present at the place of employment during the prior calendar year; or
- (2) Lead was present at the place of employment during the prior calendar year only in a de minimus amount.

(b) An employer in an industry listed in Section 38005 is not required to pay the Occupational Lead Poisoning Fee if the employer had fewer than 10 employees during the previous calendar year.

(c) An employer in an industry listed in Section 38005 that involves painting, including but not limited to Standard Industrial Classification Code 1721, "Painting and Paper Hanging," is not eligible for a fee waiver if, in the operation of the employer's business in the prior calendar year, any employees altered or disturbed paint in or on a building constructed prior to 1978 or on a painted metal structure, unless the employer demonstrates that lead was not present in any of the altered or disturbed paint, or was present only in a de minimus amount.

(d) An employer in an industry listed in Section 38005 that involves demolition, including but not limited to Standard Industrial Classification Code 1795, "Wrecking and Demolition Work," is not eligible for a fee waiver if, in the operation of the employer's business in the prior calendar year, any employees altered or disturbed a painted metal structure, or a building with painted surfaces that was constructed prior to 1978, unless the employer demonstrates that lead was not present in any of the disturbed paint, or was present only in a de minimus amount.

(e) An employer in an industry listed in Section 38005 that involves handling or processing of scrap metal, including but not limited to Standard Industrial Classification Code 5093, "Scrap and Waste Materials," is not eligible for a fee waiver if, in the operation of the employer's business in the prior calendar year, any employees altered or disturbed materials that may contain lead or have a lead-containing coating, unless the employer demonstrates that lead was not present in any of the altered or disturbed materials, or was present only in a de minimus amount.

- (f) An employer's request for a fee waiver may be denied for any of the following reasons:
- (1) Identification of the presence of lead in a greater than de minimus amount at the place of employment or in the materials or processes used in the operation of the employer's business; or
  - (2) Failure of an employer to request a fee waiver and supply the documentation required in Section 38003(d) within 180 days following the due date of the Occupational Lead Poisoning Fee; or
  - (3) Failure of an employer to provide sufficient and accurate information by which to evaluate the request for a fee waiver.
- (g) The Department shall give written notice to the employer of the denial of an employer's request for a fee waiver and the reason or reasons for the denial.
- (h) An employer whose request for a fee waiver is denied shall have 15 working days from receipt of notice of the denial to request a reconsideration of the denial and to supply any additional facts which the employer believes support the granting of the fee waiver request.

### **Section 38003. Procedures for Application of a Waiver.**

- (a) An employer requesting a fee waiver shall conduct a lead evaluation of the premises, materials and processes used in the operation of the employer's business during the prior calendar year to determine whether lead was present. This evaluation shall include, but not be limited to, review of Material Safety Data Sheets or other manufacturer-supplied data, product labeling, or analytical testing results for presence of lead in materials of unknown composition.
- (b) An employer requesting a fee waiver shall establish that lead was not present, or was present only in a de minimus amount, at the place of employment during the prior calendar year.
- (c) An employer requesting a fee waiver shall have 180 days following the due date of the Occupational Lead Poisoning Fee to submit documentation that lead was not present, or was present only in a de minimus amount, at the place of employment during the prior calendar year.
- (d) An employer requesting a fee waiver shall demonstrate that lead was not present, or was present only in a de minimus amount, at the place of employment by providing documentation that includes:
- (1) A Request for a Waiver of the Occupational Lead Poisoning Fee DHS Form 8484 (4/97) which is hereby incorporated by reference, containing the following information:
    - (A) Name, title, and affiliation of the person who conducted the lead evaluation of the employer's business operation as outlined in Section 38003 (a) and, if a consultant, also telephone number and address.
    - (B) Statement signed by the person conducting the lead evaluation that attests that, to the best of the person's knowledge, no lead or lead-containing materials were present in any amount, or were present only in a de minimus amount (as defined in Section 38001 of Title 17 of the California Code of Regulations) during the prior calendar year, in the premises, materials and processes used in the operation of the business.

(C) Description of the nature of the employer's business, including a description of the products manufactured and/or services provided.

(D) The employer's Board of Equalization-designated, 8-digit account number provided to the employer at the time the Occupational Lead Poisoning Fee is assessed.

(E) Name, title, company address, telephone number, and signature of an authorized representative of the employer who is requesting the fee waiver.

(F) An employer in an industry listed in Section 38005 that involves construction work, who wishes to apply for a fee waiver, shall identify the extent to which the company's operations involved altering or disturbing painted surfaces by completing Part B of Form DHS 8484 (4/97).

(G) An employer in an industry listed in Section 38005 that involves detective, guard, armored car or other security services, who wishes to apply for a waiver, shall identify the extent to which the company's operations involved altering or disturbing lead materials by discharging weapons on company time by completing Part C of Form DHS 8484 (4/97).

(H) An employer in an industry listed in Section 38005 that involves metal work who wishes to apply for a fee waiver, shall identify the extent to which the company's operations involved altering or disturbing lead-containing metals or alloys (including lead-containing brass or bronze) by completing Part D of Form DHS 8484 (4/97).

(I) An employer in an industry listed in Section 38005 that involves the handling or processing of scrap metal who wishes to apply for a fee waiver, shall identify the extent to which the company's operations involved altering or disturbing lead-containing or lead-painted scrap metal by completing Part E of Form DHS 8484 (4/97).

(2) Correspondence from an employer, workers' compensation representative, or consultant that includes all of the information outlined in Section 38003(d)(1).

(e) An employer requesting a fee waiver may be required to provide additional information describing the nature of the employer's business, including the premises, materials or processes used in the operation of the employer's business.

(f) Results of industrial hygiene monitoring tests that show non-detectable concentrations of lead in workplace air shall not be considered sufficient documentation that lead was not present at the place of employment.

#### **Section 38004. Periods For Which Fee Waivers are Granted.**

(a) The Department shall have the discretion to grant a permanent or annual waiver of the Occupational Lead Poisoning Fee to an employer who has provided acceptable documentation that lead was not present at the place of employment, or was present only in a de minimus amount. The decision to grant a permanent waiver or annual waiver shall be based on:

(1) A description of the employer's business operation;

- (2) The potential for lead use within the industries classified under the employer's Standard Industrial Classification Code;
  - (3) The likelihood that the employer's business operation may change over time, causing lead to become present at the place of employment in a greater than de minimus amount.
- (b) The Department shall, at the time a fee waiver is granted, inform the employer of whether the waiver is granted on a permanent or annual basis.
- (c) The Department shall rescind a company's permanent waiver of the Occupational Lead Poisoning Fee if the Department obtains evidence, including but not limited to a substantiated case report of occupational lead poisoning in an employee, that indicates that lead is present in a greater than de minimus amount at the place of employment.
- (d) The Department shall rescind a company's annual waiver of the Occupational Lead Poisoning Fee if the Department obtains evidence, including but not limited to a substantiated case report of occupational lead poisoning in an employee, that indicates that lead was present in a greater than de minimus amount at the place of employment during the calendar year for which the annual waiver was granted.
- (e) An employer who is granted a permanent fee waiver shall notify the Department within 30 days of any changes in the premises, materials or processes used in the operation of the business that result in lead being present in a greater than de minimus amount at the place of employment.
- (f) An employer who is granted an annual waiver shall notify the Department within 30 days if the employer becomes aware that lead was present in a greater than de minimus amount at the place of employment during the calendar year for which the annual waiver was granted.

### **Article 3. Applicable Industries**

#### **Section 38005. Occupational Lead Poisoning Fee: Applicable Industries.**

- (a) The list of industries in Section 105195 of the California Health and Safety Code for which the Occupational Lead Poisoning Fee is applicable is hereby modified as follows:

	<u>SIC Code</u>	<u>Industry</u>
(1)	1041	Gold ores
(2)	1521	General contractors - Single-family houses
(3)	1541	General contractors - Industrial buildings and warehouses
(4)	1542	General contractors - Nonresidential buildings, other than industrial buildings and warehouses
(5)	1611	Highway and street construction, except elevated highways
(6)	1622	Bridge, tunnel, and elevated highway construction
(7)	1623	Water, sewer, pipeline and communications and power line construction
(8)	1629	Heavy construction, not elsewhere classified
(9)	1711	Plumbing, heating, and air-conditioning
(10)	1721	Painting and paper hanging
(11)	1761	Roofing, siding and sheet metal work
(12)	1791	Structural steel erection
(13)	1795	Wrecking and demolition work
(14)	1796	Installation or erection of building equipment, not elsewhere classified

(15)	1799	Special trade contractors, not elsewhere classified
(16)	2759	Commercial printing, not elsewhere classified
(17)	2782	Blankbooks, looseleaf binders and devices
(18)	2816	Inorganic pigments
(19)	2819	Industrial inorganic chemicals, not elsewhere classified
(20)	2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers
(21)	2851	Paints, varnishes, lacquers, enamels and allied products
(22)	2869	Industrial organic chemicals, not elsewhere classified
(23)	2891	Adhesives and sealants
(24)	2892	Explosives
(25)	2899	Chemicals and chemical preparations, not elsewhere classified
(26)	3053	Gaskets, packing, and sealing devices
(27)	3069	Fabricated rubber products, not elsewhere classified
(28)	3087	Custom compounding of purchased plastics resins
(29)	3089	Plastics products, not elsewhere classified
(30)	3229	Pressed and blown glass and glassware, not elsewhere classified
(31)	3231	Glass products, made of purchased glass
(32)	3253	Ceramic floor and wall tile
(33)	3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories
(34)	3262	Vitreous china table and kitchen articles
(35)	3269	Pottery products, not elsewhere classified
(36)	3312	Steel works, blast furnaces (including coke ovens), and rolling mills
(37)	3313	Electrometallurgical products, except steel
(38)	3315	Steel wiredrawing and steel nails and spikes
(39)	3316	Cold-rolled steel sheet, strip and bars
(40)	3317	Steel pipe and tubes
(41)	3321	Gray and ductile iron foundries
(42)	3325	Steel foundries, not elsewhere classified
(43)	3331	Primary smelting and refining of copper
(44)	3339	Primary smelting and refining of nonferrous metals, except copper and aluminum
(45)	3341	Secondary smelting and refining of nonferrous metals
(46)	3351	Rolling, drawing, and extruding of copper
(47)	3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum
(48)	3357	Drawing and insulating of nonferrous wire
(49)	3363	Aluminum die-castings
(50)	3364	Nonferrous die-castings, except aluminum
(51)	3365	Aluminum foundries
(52)	3366	Copper foundries
(53)	3369	Nonferrous foundries, except aluminum and copper
(54)	3398	Metal heat treating
(55)	3399	Primary metal products, not elsewhere classified
(56)	3411	Metal cans
(57)	3429	Hardware, not elsewhere classified
(58)	3431	Enameled iron and metal sanitary ware
(59)	3432	Plumbing fixture fittings and trim
(60)	3433	Heating equipment, except electric and warm air furnaces
(61)	3441	Fabricated structural metal
(62)	3444	Sheet metal work
(63)	3463	Nonferrous forgings
(64)	3479	Coating, engraving, and allied services, not elsewhere classified
(65)	3484	Small arms
(66)	3491	Industrial valves

(67)	3492	Fluid power valves and hose fittings
(68)	3494	Valves and pipe fittings, not elsewhere classified
(69)	3496	Miscellaneous fabricated wire products
(70)	3497	Metal foil and leaf
(71)	3532	Mining machinery and equipment, except oil and gas field machinery and equipment
(72)	3544	Special dies and tools, die sets, jigs and fixtures, and industrial molds
(73)	3561	Pumps and pumping equipment
(74)	3567	Industrial process furnaces and ovens
(75)	3585	Air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment
(76)	3599	Industrial and commercial machinery and equipment, not elsewhere classified
(77)	3624	Carbon and graphite products
(78)	3661	Telephone and telegraph apparatus
(79)	3663	Radio and television broadcasting and communications equipment
(80)	3669	Communications equipment, not elsewhere classified
(81)	3671	Electron tubes
(82)	3674	Semiconductors and related devices
(83)	3678	Electronic connectors
(84)	3679	Electronic components, not elsewhere classified
(85)	3691	Storage batteries
(86)	3692	Primary batteries, dry and wet
(87)	3699	Electrical machinery, equipment and supplies, not elsewhere classified
(88)	3711	Motor vehicles and passenger car bodies
(89)	3714	Motor vehicle parts and accessories
(90)	3721	Aircraft
(91)	3728	Aircraft parts and auxiliary equipment, not elsewhere classified
(92)	3812	Search, detection, navigation, guidance, aeronautical, and nautical systems and instruments
(93)	3825	Instruments for measuring and testing of electricity and electrical signals
(94)	3829	Measuring and controlling devices, not elsewhere classified
(95)	3844	X-ray apparatus and tubes and related irradiation apparatus
(96)	3914	Silverware, plated ware, and stainless steel ware
(97)	3949	Sporting and athletic goods, not elsewhere classified
(98)	3953	Marking devices
(99)	3965	Fasteners, buttons, needles, and pins
(100)	4813	Telephone communications, except radiotelephone
(101)	4911	Electric services
(102)	5064	Electrical appliances, television and radio sets
(103)	5093	Scrap and waste materials
(104)	5941	Sporting goods stores and bicycle shops
(105)	7381	Detective, guard, and armored car services
(106)	7538	General automotive repair shops
(107)	7539	Automotive repair shops, not elsewhere classified
(108)	7997	Membership sports and recreation clubs
(109)	7999	Amusement and recreation services, not elsewhere classified
(110)	8734	Testing laboratories